

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

WESTERN DIVISION

ESTATE OF JOSE R. FELICIANO,)
By and through Jose L. Feliciano and)
Migdalia Rosado, as Administrators of)
The Estate of Jose R Feliciano,)
Plaintiff)

vs.)

Civil No. 03-30.308-MAP

KEVIN A. MILES,)
LEROY HOLDING COMPANY, INC.,)
and SLC TRANSPORTS, INC.,)
Defendants)

JOINT PRE-TRIAL MEMORANDUM

1. Concise Statement of the Evidence

The Plaintiff has brought a claim for wrongful death arising out of a February 11, 2003 motor vehicle accident. The Plaintiff will present evidence demonstrating that the accident occurred on said date on the Massachusetts Turnpike in Sturbridge, Massachusetts, and that the defendants' tractor trailer struck and killed the decedent, Jose R. Feliciano. Further evidence will be presented demonstrating how the accident occurred, and what damages the decedent's estate has suffered as a result of the accident.

The Plaintiff will present evidence of the accident through eye witness testimony, photographs of the scene, and the medical examiner's report. The Plaintiff will also present expert testimony through an accident re-constructionist who will state that Mr. Feliciano was struck while standing in the breakdown lane of the Massachusetts Turnpike. The expert will testify as to what physical evidence he has used to draw his conclusion, and testify as to what calculations were used in reaching his conclusion. In addition, the expert will present a simulation of the accident through the use of a computer model that reconstructs the accident events.

The Plaintiff will present evidence demonstrating that Defendant Kevin Miles acted with reckless disregard and/or gross negligence in causing the accident and the decedent's death. Evidence will show that Mr. Miles was totally indifferent to the well being of the man he saw standing in the breakdown lane near the disabled vehicle.

The Plaintiff will present evidence of the damages suffered by the decedent's estate. Evidence of loss of consortium, companionship, society, and other elements of damage pursuant to the wrongful death statute will be presented in the form of testimony from the decedent's parents who are the sole heirs of the decedent's estate. In support of the parents' testimony, evidence will include testimony from the decedent's friends, family and teachers describing their experiences with the decedent. Documentary evidence will also be presented in support of the decedent's parents' testimony and will include photographs of the decedent, awards honoring the decedent, and journal notes written by the decedent. Additional documentary evidence in the

form of funeral expenses will also be presented.

Defendants deny any liability with respect to the accident of February 11, 2003. The Defendants will present evidence that will show that the exact point of impact between the truck and the decedent is unknown. Trooper John Jakubowski, an Accident Reconstructionist for the Massachusetts State Police, will testify that in his opinion the exact point of impact is unknown and that it is likely that the decedent stumbled or stepped into the travel lane before being struck by the truck. Additionally, known of the witnesses can testify that the truck actually crossed into the breakdown lane to strike the decedent. The Defendant, Kevin Miles, vehemently denies that he acted with reckless disregard or gross negligence in causing this accident. The evidence will show that Mr. Miles acted reasonably and that he did not cross into the breakdown lane to strike the decedent.

2. Statement of Facts

The evidence will show that on February 11, 2003, Defendant Kevin Miles was driving a 1997 Volvo tractor trailer truck for his employer, the defendant SLC Transports, Inc. The truck was leased to SLC by Defendant Leroy Holding Company, Inc. Mr. Miles was driving eastbound on the Massachusetts Turnpike through Sturbridge, Massachusetts when he saw a disabled vehicle about one-quarter of a mile ahead of him. The disabled vehicle was parked completely within the breakdown lane of the highway, and Mr. Miles saw a man outside the vehicle.

The operator of the disabled vehicle was the decedent, Jose R. Feliciano. He had been traveling with a friend named Pablo Morales. The two were members of the 110th Maintenance Company of the Army National Guard, and they were traveling to Fort Devens to get their deployment orders to Iraq. On the way, the car they were driving got a flat tire and they parked the car in the breakdown lane. Once parked, they raised the trunk of the car and began efforts to change the tire by the time Mr. Miles first saw them.

Mr. Miles continued driving down the highway. Mr. Miles did not slow his truck as he approached, and remained in the right hand travel lane of the highway. Mr. Feliciano was struck and killed by Mr. Miles' truck.

As a result of the decedent's death, the parents of Jose R. Feliciano have suffered losses including loss of consortium of their son and funeral expenses.

3. Contested Issues of Fact

The point of impact on the roadway is in dispute. Specifically, whether the impact occurred in the breakdown lane verses the travel lane of the highway is disputed. This has led to a dispute concerning the defendants' liability for the accident.

The Defendants contest the amount of damages alleged by the Plaintiffs.

4. Jurisdictional Questions

There are no jurisdictional questions raised in this case.

5. **Questions Raised by Pending Motions**

The Plaintiff has filed a Motion in Limine requesting that the Court preclude the defendants' expert from testifying as to any opinions he has regarding the cause of the accident, whether the decedent was in the breakdown lane or travel lane, and whether the defendant truck driver caused the truck to enter the breakdown lane prior to and/or at impact with the decedent.

The Plaintiff has filed a Motion in Limine requesting that the Court preclude the defendants from entering into evidence any testimony or documents concerning life insurance proceeds paid to the decedent's heirs.

The Defendants have filed numerous Motions in Limine to exclude or limit the entry of physical evidence.

6. **Issues of Law/Issues of Evidence**

None.

7. **Requested Amendments to Pleadings**

It is believed that the Plaintiff will dismiss the three counts of conscious pain and suffering against the Defendants.

8. **Additional Matters Aiding in Disposition of Case**

The Plaintiff plans to use a Power Point presentation in closing argument. One of the Plaintiff's expert's also plans to use a Power Point presentation and a CD-ROM containing a simulation of the accident during his testimony. The Plaintiff's expert is scheduled to testify on May 10, 2005 as he is coming from Florida.

9. **Probable Length of Trial by Jury**

The parties estimate that the trial will last 5 to 7 days before a jury.

10. **Witness Lists**
a. **Plaintiff's List**

Fact Witnesses:

Stephen Moore
17 Alden Street
Poughkeepsie, NY 12603

Mr. Moore is expected to testify regarding the facts of the accident which he observed on February 11, 2003.

Pablo Morales
10 Chestnut Street
Apartment 2503
Springfield, MA 01103

Mr. Morales is expected to testify regarding the facts of the accident which he observed on February 11, 2003. Mr. Morales is also expected to provide testimony regarding the damages claimed by the Plaintiff.

Dawn Rodgers
Roger L. Putnam Vocational Technical High School
1300 State Street
Springfield, MA 01109

Ms. Rodgers is expected to provide testimony regarding the damages claimed by the Plaintiff.

Pedro Rivera-Moran
Roger L. Putnam Vocational Technical High School
1300 State Street
Springfield, MA 01109

Mr. Rivera-Moran is expected to provide testimony regarding the damages claimed by the Plaintiff.

Dennis Fenton
Roger L. Putnam Vocational Technical High School
1300 State Street
Springfield, MA 01109

Mr. Fenton is expected to provide testimony regarding the damages claimed by the Plaintiff.

Clayton Aline
Roger L. Putnam Vocational Technical High School
1300 State Street
Springfield, MA 01109

Mr. Aline is expected to provide testimony regarding the damages claimed by the Plaintiff.

Dan Nicely
Auto Damage Appraisers
257 Hampden Street
Chicopee, MA 01013-1538

Mr. Nicely is expected to provide testimony regarding his damage appraisal of the 1986 Crown Victoria owned by Jose L. Feliciano.

Melissa Feliciano
66 Redland Street
Springfield, MA 01107

Ms. Feliciano is expected to provide testimony regarding the damages claimed by the Plaintiff.

Migdalia Rosado
66 Redland Street
Springfield, MA 01107

Ms. Rosado is expected to provide testimony regarding the damages claimed by the Plaintiff.

Jose L. Feliciano
66 Redland Street
Springfield, MA 01107

Mr. Feliciano expected to provide testimony regarding the damages claimed by the Plaintiff.

Brian Tassone
Brannick Investigations
Feeding Hills, MA

Mr. Tassone is expected to testify with respect to his investigation into the accident which is the subject of the plaintiff's complaint.

Kevin Miles
311 Seminole Street
Troy, NY 12182

Mr. Miles will be treated as a hostile witness and is expected to provide testimony regarding the facts of the accident.

Trooper John Jakubowski
Massachusetts State Police

Trooper Jakubowski will be treated as a hostile witness and is expected to provide testimony regarding his investigation into the accident.

Principal
Roger L. Putnam Vocational Technical High School
1300 State Street
Springfield, MA 01109

The school principal is expected to testify that he signed the certificates of achievement which were issued to the decedent.

Robert J. O'Connell
Chairman, President and CEO
MassMutual Financial Group
Springfield, MA 01111-0001

Mr. O'Connell is expected to testify that the decedent was selected as a MassMutual Academic Achiever for the year 2001.

Chief Paula O'Meara
Springfield Police Department
Springfield, MA

Chief O'Meara is expected to testify that the decedent completed the prescribed course of the Springfield Citizen's Police Academy Cop Shop on May 15, 2001.

Expert Witnesses:
Jack Sparks, Ph.D.
P.O. Box 59
3065 Highway 29 South
Cantonment, FL 32533

Dr. Sparks is expected to provide his expert opinion regarding the cause of the February 11, 2003 accident.

Jennifer Lipman, M.D.
Commonwealth of Massachusetts
Office of the Chief Medical Examiner
Headquarters
720 Albany Street

Boston, MA 02118

Dr. Lipman is expected to testify to the Postmortem Examination Report regarding the February 11, 2003 accident.

b. Defendant's List

The Defendants intend to call the same witnesses as the Plaintiff with the exception of Trooper Americo DiLorenzo of the Massachusetts State Police who was one of the first responders to the accident scene.

11. Proposed Exhibits

Plaintiff's List:

- P1 Birth Certificate of Jose Rafael Feliciano
- P2 Death Certificate of Jose Rafael Feliciano
- P3-6 Puerta Del Cielo Funeral Bill for Jose Rafael Feliciano's Funeral
- P7 - P42 Massachusetts State Police Crime Scene Services Photo Log for February 11, 2003
- P43 Medical Examiner's Postmortem Examination Report of Jose Rafael Feliciano - Objected
- P44 Photograph of Jose R. Feliciano and Melissa Feliciano
- P45 Photograph of Jose R. Feliciano in High School Football Uniform
- P46 Photograph of Jose R. Feliciano in High School Football Uniform
- P47 Photograph of Jose R. Feliciano in High School Football Uniform
- P48 Photograph of Jose R. Feliciano in Army National Guard Uniform
- P49 Photograph of Jose R. Feliciano in Army National Guard Uniform
- P50 Photograph of Jose R. Feliciano Sitting on a Tank in Uniform
- P51 Photograph of Jose R. Feliciano in Casket - Objected

- P52 Photograph of Jose R. Feliciano in Casket - Objected
- P53 Photograph of Jose R. Feliciano in Casket - Objected
- P54 Photograph of Jose R. Feliciano in Casket - Objected
- P55 Photograph of Jose L. Feliciano and Migdalia Rosado at the Funeral of Jose R. Feliciano - Objected
- P56 Photograph of Flag Folding at Funeral of Jose R. Feliciano - Objected
- P57 Photograph of Parents Receiving Flag at Jose R. Feliciano's Funeral - Objected
- P58 Photograph of Family at Funeral Procession - Objected
- P59 Photograph of Migdalia Rosado, Jose L. Feliciano and Melissa Feliciano at Funeral - Objected
- P60 Photograph of Feliciano Family Releasing Doves at Funeral - Objected
- P61 Photograph of Jose R. Feliciano for 2001 Putnam Vocational High School Yearbook
- P62-63 Remembrance Card of Jose R. Feliciano - Objected
- P64-65 Jose R. Feliciano's Armed Services Identification Card
- P66 Jose R. Feliciano's High School Report Card
- P67 Jose R. Feliciano's Fifth Grade Report Card
- Objection has been made to P68 through P87:
- P68 Putnam High School Certificate of Excellence – First Honors, First Marking Period, 1997
- P69 Putnam High School Certificate of Excellence – First Honors, Second Marking Period, 1997-1998
- P70 Putnam High School Certificate of Football Team Membership, 1997
- P71 Putnam High School Certificate of Wrestling Team Membership, 1997-1998

- P72 Putnam High School Certificate of Football Team Membership, 1998
- P73 Putnam High School Certificate of Excellence – First Honors, Third Marking Period, 1998
- P74 Putnam High School Student of the Month Certificate, May 1998
- P75 Putnam High School Certificate of Excellence – Third, First Marking Period, 1998
- P76 Hampden County Summer Youth Employment and Training Program, Certificate of Completion, August 14, 1998
- P77 Putnam High School Certificate of Wrestling Team Membership, 1998-1999
- P78 Putnam High School Certificate of Football Team Membership, 1999
- P79 Putnam High School Certificate of Excellence - Second Honors, Third Marking Period, 1999
- P80 Putnam High School Certificate of Excellence for Outstanding Performance in Entrepreneurship, May 25, 2001
- P81-82 Putnam High School Competency Certificate for Computer Technology, June 4, 2001
- P83-84 MassMutual Acceptance Letter and Certificate for Academic Honors – 1999
- P85 MassMutual Acceptance Letter for Academic Honors – 2001
- P86 Certificate from Springfield Police Department for Springfield Citizen's Police Academy Cop Shop – May 15, 2001
- P87 Entrepreneurial Institute At STCC – Letter of Selection for YES Program's Entrepreneur of the Year - 2001
- P88 Department of the Army, Certificate of Training – Completion of Basic Combat Training, August 31, 2000
- P89 US Army Ordnance Corps – Certificate of Affiliation, December 17, 2001
- P90 Certificate of Award – Army Achievement Medal – January 2003

P91 Honorable Service Certificate

P92 Jose R. Feliciano's 2002 Tax Returns and W-2 Forms - Objected

P93 Jose R. Feliciano's May 2001 Journal Notation - Objected

P94 Jose R. Feliciano's Handwritten House Buying Investment Plan - Objected

P95 Jose R. Feliciano's Handwritten Truck Investment Plan - Objected

P96 US Army Ordnance - Missile and Munitions Center and School, Graduate Certificate, December 19, 2001

P97 JP Graphics Logo and Business Records - Objected

P98 Sacraments

P99 New York State Commercial Driver's Manual - Objected

P100 Trooper Jakubowski's handwritten notes containing measurements of the accident


P101 Computerized Simulation of Accident - Objected

P102 Expert Slide Show - Objected

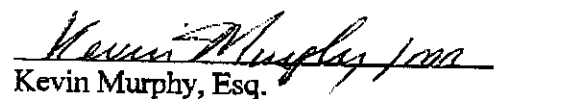
Defendants' List:

The Defendants also plan to use the Massachusetts State Police Crime Services' photographs regarding the accident scene and vehicles.

The Plaintiff
Estate of Jose R. Feliciano
By Its Attorneys


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The Defendants
**Kevin Miles, SLC Transport, Inc.,
Leroy Holding Company**
By Their Attorneys


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Migdalia Rosado, as Administrators of)
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KEVIN A. MILES,)
LEROY HOLDING COMPANY, INC.,)
and SLC TRANSPORTS, INC.,)
Defendants)

STIPULATION OF UNCONTESTED FACTS

1. Defendant Kevin Miles resides at 311 Seminole Street, Troy, New York.
2. The Plaintiff, the Estate of Jose R. Feliciano, is an estate established in the Hampden County Probate Court, Springfield, Hampden County, Massachusetts, on behalf of Jose R. Feliciano formerly of Springfield, Massachusetts.
3. The Administrators of the Estate of Jose R. Feliciano are his father, Jose L. Feliciano, and his mother Migdalia Rosado, both of Springfield, Hampden County, Massachusetts.
4. In June 2001, Jose R. Feliciano graduated from Roger L. Putnam Vocational High School in Springfield, Massachusetts.
5. On the morning of February 11, 2003, Jose R. Feliciano was nineteen (19) years old and had a life expectancy of fifty-nine (59) more years, or until age seventy-eight (78) in accordance with the National Vital Statistics Reports, Volume 53, Number 6, November 10, 2004 which reports the CDC's United States Life Tables, 2002.
6. Jose L. Feliciano is forty-eight (48) years old and has a life expectancy of thirty-one (31) more years or until age seventy-nine (79) in accordance with the National Vital Statistics Reports, Volume 53, Number 6, November 10, 2004 which reports the CDC's United States Life Tables, 2002.
7. Migdalia Rosado is forty-two (42) years old and has a life expectancy of thirty-seven (37) more years or until age seventy-nine (79) in accordance with the National Vital Statistics Reports, Volume 53, Number 6, November 10, 2004 which reports the CDC's United States Life Tables, 2002.

8. On February 11, 2003, Defendant Kevin Miles was employed by Defendant SLC Transports, Inc.
9. On February 11, 2003, Defendant Kevin Miles was acting within the scope of his employment with Defendant SLC Transports, Inc.
10. Defendant SLC Transports, Inc. is a corporation organized under the laws of the State of New York, with a usual place of business at 29 Mill Street, Albany, New York.
11. On February 11, 2003, Defendant SLC Transports, Inc. was lessee of a 1997 Volvo tractor trailer, further identified by New York registration number 24413PA and vehicle identification number 4VGWDADF8VN741291 (hereinafter referred to as the "tractor"), and the lessee of a 1998 trailer further identified by Maine registration number 0660250 and vehicle identification number 1GRAA9628SB015606 (hereinafter referred to as the "trailer").
12. Defendant LEROY HOLDING COMPANY, INC. is a corporation organized under the laws of the State of New York, with a usual place of business at 20 North Street, Albany, New York 12204, and was the owner of a 1997 Volvo tractor trailer, further identified by New York registration number 24413PA and vehicle identification number 4VGWDADF8VN741291 (hereinafter referred to as the "tractor"), and the owner of a 1998 trailer further identified by Maine registration number 0660250 and vehicle identification number 1GRAA9628SB015606 (hereinafter referred to as the "trailer").
13. At approximately 11:10 a.m. on February 11, 2003, Defendant Kevin Miles was operating the tractor trailer leased by SLC Transports, Inc. and owned by Leroy Holding Company, Inc. eastbound on Interstate 90 in Sturbridge, Massachusetts.
14. On the morning of February 11, 2003, Jose R. Feliciano was operating a 1996 Crown Victoria which was owned by his father, Jose L. Feliciano.

The Plaintiff
Estate of Jose R. Feliciano
By Its Attorneys



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The Defendants
Kevin Miles, SLC Transport, Inc.,
Leroy Holding Company
By Their Attorneys



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